

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 2 A Limited Liability Partnership
 3 Including Professional Corporations
 FRANK FALZETTA, Cal. Bar No. 125146
 JENNIFER M. HOFFMAN, Cal. Bar No. 240600
 333 South Hope Street, 43rd Floor
 Los Angeles, California 90071-1422
 Telephone: 213.620.1780
 Facsimile: 213.620.1398
 E mail: ffalzetta@sheppardmullin.com
 jhoffman@sheppardmullin.com

7 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 8 A Limited Liability Partnership
 Including Professional Corporations
 JEFFREY S. CROWE, Cal. Bar No. 216055
 KATHERINE C. SAMPLE, Cal. Bar No. 259325
 650 Town Center Drive, 10th Floor
 Costa Mesa, California 92626-1993
 Telephone: 714.513.5100
 Facsimile: 714.513.5130
 E mail: jcrowe@sheppardmullin.com
 ksAMPLE@sheppardmullin.com

13 Attorneys for Defendant STATE FARM GENERAL
 14 INSURANCE COMPANY

15 **UNITED STATES DISTRICT COURT**
 16 **NORTHERN DISTRICT OF CALIFORNIA**

18 JAMES DOE, an individual, on behalf
 19 of himself, the general public and others
 similarly situated,

20 Plaintiffs,

21 v.

22 STATE FARM GENERAL
 23 INSURANCE COMPANY, an Illinois
 corporation; and MOES 1-25, inclusive,

24 Defendants.

Case No.:

**DEFENDANT STATE FARM
 GENERAL INSURANCE
 COMPANY'S NOTICE OF
 REMOVAL OF ACTION**

**[28 U.S.C. §§ 1332 and 1441(b);
 TRADITIONAL DIVERSITY
 JURISDICTION AND CAFA
 JURISDICTION]**

**Alameda County Superior Court,
 Case No. 23CV036346**

*[Filed Concurrently with Civil Cover
 Sheet and Notice and Certification of
 Interested Parties]*

1 TO THE HONORABLE COURT, ALL PARTIES AND THEIR
 2 ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that defendant State Farm General Insurance
 4 Company (“State Farm”) hereby removes the action titled *James Doe v. State Farm*
 5 *General Insurance Company*, Alameda County Superior Court Case No.
 6 23CV036346, to the United States District Court for the Northern District of
 7 California, on the grounds set forth below:

8 **JURISDICTIONAL STATEMENT PER LOCAL RULE 3-5(a)**

9 1. This action is a civil action between citizens of different states and the
 10 amount in controversy exceeds \$75,000, exclusive of interest and costs.
 11 Accordingly, this Court has original jurisdiction over Plaintiff James Doe’s claims
 12 and the claims of the unnamed putative class members under 28 U.S.C. §§ 1332,
 13 1367 and 1441.

14 2. This Court also has original jurisdiction of this action under the Class
 15 Action Fairness Act of 2005, codified in relevant part at 28 U.S.C. section
 16 1332(d)(2), because the amount in controversy exceeds \$5 million, exclusive of
 17 interest and costs, is a purported class action with over 100 putative class members,
 18 and the Plaintiff and putative class members are citizens of a State different from
 19 that of defendant State Farm.

20 **INTRADISTRICT ASSIGNMENT PER CIVIL LOCAL RULE 3-5(b)**

21 3. This action is appropriate for the San Francisco or Oakland Divisions
 22 because State Farm removes this action from the Alameda County Superior Court.

23 **BACKGROUND**

24 4. On June 20, 2023, plaintiff James Doe (“Plaintiff”) filed his Complaint
 25 against State Farm in the matter titled *James Doe v. State Farm General Insurance*
 26 *Company*, Alameda County Superior Court Case No. 23CV036346 (the “Lawsuit”).
 27 On August 17, 2023, Plaintiff filed a First Amended Complaint (the “FAC”) in the
 28 Lawsuit.

1 5. On August 18, 2023, Plaintiff served State Farm's agent for service of
 2 process with the Summons, FAC, Civil Case Cover Sheet, Notice of Case
 3 Management Order, Notice of Complex Determination Hearing and Minute Order,
 4 true and correct copies of which are collectively attached hereto as Exhibit "A."
 5 Attached as Exhibit "B" is the Proof of Service of Summons filed by Plaintiff on
 6 August 21, 2021 and reflecting service of the Summons and Complaint in the
 7 Lawsuit on August 18, 2023.

8 6. In the Lawsuit, Plaintiff asserts causes of action for: (1) Breach of
 9 Contract; (2) Breach of the Covenant of Good Faith and Fair Dealing; (3) Violation
 10 of Bus. & Prof. Code § 17200; (4) Fraud; (5) Intentional and Negligent Infliction of
 11 Emotional Distress; (6) Violation of Unruh Civil Rights Act; (7) Violation of the
 12 Consumers Legal Remedies Act; (8) Defamation; and (9) "Wrongful Policy
 13 Cancellation." (FAC, ¶¶ 63-120.)

14 7. According to the FAC, State Farm issued Personal Articles Policy No.
 15 05-CT-M429-2 to Plaintiff for the period effective from September 30, 2021 to
 16 September 30, 2022 (the "Policy"). (FAC, ¶ 6.) Subject to its terms, conditions, and
 17 limitations, the Policy has jewelry coverage limits up to \$92,798. (Exhibit "C," the
 18 certified Policy.)

19 8. In the Lawsuit, Plaintiff alleges that, on June 19, 2022, he lost his
 20 Blancpain Villeret watch, which he values at approximately \$30,300. (*Id.*, ¶¶ 6, 22.)
 21 In or around July 2022, Plaintiff made a claim for the "mysterious disappearance" of
 22 his watch. (*Id.*, ¶ 15.) The gravamen of Plaintiff's claims is that State Farm
 23 wrongfully referred Plaintiff's Claim for the lost watch to its Special Investigations
 24 Unit ("SIU") and unreasonably denied the Claim on January 3, 2023. (*Id.*, ¶¶ 15-16,
 25 26.) Specifically, Plaintiff alleges that "State Farm weaponized its Special
 26 Investigation Unit to (wrongfully) deny insurance coverage for Plaintiff's legitimate
 27 and covered loss solely to increase its profitability. State Farm institutionalized these
 28 nefarious and unlawful practices within its organization, particularly in its SIU

1 department.” (*Id.*, ¶ 16.) Plaintiff further alleges that State Farm denied the Claim
 2 and then canceled the Policy “based on its patently false and baseless January 3,
 3 2023 letter, which was based on untruths, falsehoods, misinformation, and
 4 misleading information, that its SIU team, which included outside service providers
 5 that it hired, fabricated, manufactured, and deployed.” (*Id.*, ¶¶ 26-27.) Plaintiff
 6 additionally claims, among other things, that State Farm’s “selfish, callous,
 7 oppressive, and nefarious conduct toward Plaintiff [caused] him extreme emotional
 8 and mental traumas.” (*Id.*, ¶ 104.)

9 9. Plaintiff seeks to bring the *Doe Action* “on behalf of himself and on
 10 behalf of all other similarly situated” individuals. (FAC, ¶ 49). He seeks to
 11 represent the following class: “All persons (1) insured under a Personal Articles
 12 Policy and a homeowners policy issued in California by State Farm; (2) who made a
 13 claim to State Farm for damages to or losses of their covered properties; (3) for
 14 claims where State Farm referred the claims to its Special Investigating Unit; and
 15 (4) ... for claims which State Farm denied coverage or paid less than the amount of
 16 the fair market value or the replacement value of each loss.” (FAC, ¶ 50).

THE COURT HAS DIVERSITY JURISDICTION OVER THIS SUIT

10 10. The Court has traditional diversity jurisdiction over this action because
 11 the amount in controversy on Plaintiff’s individual claims exceeds \$75,000,
 12 exclusive of interest and costs.

13 11. Plaintiff seeks “general, special and consequential damages according
 14 to proof,” various forms of injunctive relief, and an order for “disgorgement of
 15 profits received through State Farm’s unfair and unlawful business practices.”
 16 (FAC, pp. 37-38.) Plaintiff also seeks recovery of, among other things: (a)
 17 “punitive and exemplary damages”; (b) attorneys’ fees; and (c) “such other and
 18 further relief as the Court deems just and proper.” (*Id.*)

19 12. Plaintiff’s compensatory damages include the alleged value of the lost
 20 watch (\$30,300) and damages for “extreme” and “severe emotional and mental

1 distress.” (FAC, ¶¶ 6, 104-105.) With a conservative estimate of \$10,000 for
 2 Plaintiff’s emotional distress damages, Plaintiff’s compensatory damages total
 3 approximately \$40,300. *See Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir.
 4 2005) (district court properly considered evidence of emotional distress damage
 5 awards in similar age discrimination cases in Washington state, and determined that
 6 the plaintiff’s emotional distress damages “would add at least an additional \$25,000
 7 to her claim” for purposes of calculating the amount in controversy); *see also Major*
 8 *v. Western Home Ins. Co.*, 169 Cal.App.4th 1197, 1203 (2009) (upholding judgment
 9 against insurer and in favor of insured on first party claim, which included
 10 \$31,359.55 in personal property damages and \$450,000 in emotional distress
 11 damages).

12 13. In determining whether the “amount in controversy” requirement of 28
 13 U.S.C. §1332(a) is met, a court “must” consider punitive damages in the calculation
 14 where recoverable under state law. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945-46
 15 (9th Cir. 2001); *Cadek v. Great Lakes Dragaway, Inc.*, 58 F.3d 1209, 1211 (7th
 16 Cir.1995), quoting *Bell v. Preferred Life Society*, 320 U.S. 238, 240 (1943) (“Where
 17 both actual and punitive damages are recoverable under a complaint each must be
 18 considered to the extent claimed in determining the jurisdictional amount.”). Here,
 19 Plaintiffs seek recovery of punitive damages based on State Farm’s alleged “bad
 20 faith” denial of Plaintiff’s Claim for his lost watch. A punitive damages award
 21 bearing only a 1:1 ratio to a compensatory damages award would place the amount
 22 in controversy over the jurisdictional minimum ($\$40,300 \times 2 = \$80,600$).
 23 *Guglielmeno v. McKee Foods Corp.*, 506 F.3d 696, 698 (9th Cir. 2007) (noting with
 24 approval District Court’s consideration of a “conservative” 1:1 punitive to
 25 compensatory damages ratio on removal); *see also State Farm Mut. Auto. Ins. Co. v.*
 26 *Campbell*, 538 U.S. 408, 425 (2003) (referencing a 4:1 ratio between punitive and
 27 compensatory damages).
 28

1 14. A court may also consider attorneys' fees where recoverable by state
 2 law in determining whether the "amount in controversy" exceeds \$75,000. *Galt G/S*
 3 *v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998). California law authorizes
 4 recovery of attorneys' fees where an insured is forced to sue to recover the benefits
 5 of the insurance contract. *Brandt v. Superior Court*, 37 Cal.3d 813, 817 (1985).
 6 Reasonable estimates are acceptable in calculating the potential attorneys' fees at
 7 issue for purposes of determining the "amount in controversy." *Nasiri v. Allstate*
 8 *Indem. Co.*, 41 Fed.Appx. 76 (9th Cir. 2002) (insurer's estimates, including
 9 estimated attorneys' fees based on awards in similar cases, satisfied burden on
 10 removal); *Guglielmeno*, 506 F.3d at 698 (noting with approval District Court's
 11 consideration of a "conservative" estimated attorneys' fee award of 12.5 % of the
 12 compensatory damages alleged). Although this Court may consider an estimated
 13 attorneys' fee award, it need not do so because Plaintiff's other damage claims
 14 exceed the jurisdictional amount.

15 15. Because the "amount in controversy" on Plaintiff's claims exceeds the
 16 jurisdictional minimum, the amount of the claims of the other putative class
 17 members may be disregarded. *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545
 18 U.S. 546, 559 (2005); *Valdez v. Neil Jones Food Co.*, 2013 LEXIS 119651 (E.D.
 19 Cal. 2013) (removal of putative class action based on diversity jurisdiction proper
 20 where one of two named plaintiffs' claims exceeded the jurisdictional amount). The
 21 Court may exercise supplemental jurisdiction over the other putative class member
 22 claims. 28 U.S.C. §1337; *Exxon*, 545 U.S. at 599.

23 16. At all relevant times, including at the time Plaintiff filed his FAC in the
 24 Lawsuit and as of the date of this Notice of Removal, Plaintiff was and is a citizen
 25 and resident of the State of California, County of Alameda. (FAC, ¶ 31.)

26 17. State Farm is an insurance company that does business in more than
 27 one state in the United States. At the time of the Lawsuit's filing and this Notice of
 28 Removal, State Farm was and is a corporation organized under the laws of the State

1 of Illinois, with its principal place of business – meaning “the place where [its]
 2 officers direct, control and coordinate [its] activities” – located in Bloomington,
 3 Illinois. *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010); *Harris v. Rand*, 682 F.3d
 4 846, 849 (9th Cir. 2012).

5 18. The citizenship of defendants sued under fictitious names is
 6 disregarded for removal purposes. *See* 28 U.S.C. § 1441(b).

7 19. Likewise, the citizenship of unnamed putative class members is
 8 disregarded for removal purposes. *Supreme Tribe of Ben Hur v. Cauble*, 255 U.S.
 9 356, 365-66 (1921); *Gibson*, 261 F.3d at 931 fn. 2.

10 **THE COURT ALSO HAS JURISDICTION UNDER CAFA**

11 20. The Court also has subject matter jurisdiction over this action under
 12 CAFA because, based on Plaintiff’s allegations and State Farm’s investigation:
 13 (1) the parties are minimally diverse; (2) the proposed class consists of 100 or more
 14 members; (3) the amount in controversy exceeds the \$5,000,000 jurisdictional
 15 threshold; (4) the primary defendants are not States, State officials, or other
 16 governmental entities; and (5) no CAFA exception applies here. *See* 28 U.S. C.
 17 § 1332(d).

18 21. The first CAFA requirement—that the parties be minimally diverse—is
 19 satisfied because at least one putative class member is a citizen of a different state
 20 than at least one defendant. 28 U.S.C. § 1332(d)(2). As recounted above, Plaintiff
 21 resides in California and State Farm is organized under the laws of Illinois, where its
 22 principal place of business is located. (*Supra*, ¶¶ 17-18).

23 22. The second CAFA requirement—that the putative class consists of at
 24 least 100 members—also is met here. Plaintiff seeks to represent a class including
 25 insureds under California Personal Articles Policies and Homeowners Policies
 26 whose property damage claims were referred to State Farm’s Special Investigative
 27 Unit (“SIU”) and denied or “paid less than the amount of the fair market value or the
 28 replacement value of each loss,” which would necessarily include claims where no

1 indemnity payment was issued. (FAC, ¶ 50). State Farm's investigation shows that
 2 it handled thousands of first party property claims made under thousands of Personal
 3 Articles Policies and Homeowners Policies issued to thousands of California
 4 insureds in the four years preceding the filing of this action that were referred to
 5 State Farm's Special Investigative Unit ("SIU") and have not had any indemnity
 6 payment issued.

7 23. The third CAFA requirement—the minimum amount in controversy—
 8 is also met. The amount in controversy must exceed the sum or value of
 9 \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2). Under CAFA,
 10 the claims of individuals comprising a putative class are aggregated. 28 U.S.C.
 11 § 1332(d)(6).

12 24. Here, Plaintiff alleges that "Plaintiff and Plaintiff class have been, and
 13 continue to be, damaged in an amount in excess of the minimum jurisdiction limits
 14 of this Court, including but not limited to: the loss of benefits under the insurance
 15 contracts [and] consequential damages including interest on monies Plaintiffs could
 16 and should have received promptly, but which they did not receive timely." (FAC, ¶
 17 68). Plaintiff additionally alleges in support of his bad faith claim that "Plaintiff and
 18 Plaintiff class have also sustained other economic damages." (FAC, ¶ 89). Plaintiff
 19 alleges that he and the Plaintiff Class pray for judgment including "general, special
 20 and consequential damages according to proof" and, on the bad faith claim,
 21 "punitive damages." (FAC, p. 37).

22 25. A removing party must present a "plausible allegation that the amount
 23 in controversy exceeds the jurisdictional threshold," which may be based on a chain
 24 of reasoning founded on reasonable assumptions. *LaCross v. Knight Transp. Inc.*,
 25 775 F.3d 1200, 1202 (9th Cir. 2015). Here, several chains of reasoning based on
 26 State Farm's investigation all support that the amount in controversy exceeds \$5
 27 million.

28

1 26. One chain of reasoning relies on available coverage limits. All first
 2 party property loss claims necessarily implicate at least some portion of the
 3 available limits. Coverage limits applicable to first party property claims that were
 4 made under California Personal Articles Policies and Homeowners Policies (under
 5 Coverage B for Contents) in the four years preceding the filing of this action, were
 6 referred to State Farm's SIU, and have not had any indemnity payment issued,
 7 exceed \$400,000,000 (four hundred million dollars). Even assuming those claims
 8 involved losses amounting to no more than 2% of the available limits, that would
 9 exceed \$8 million and the jurisdictional minimum. If the claims implicated only 1%
 10 of the available coverage limits, that amount combined with punitive damages of
 11 only a one to one ratio (which Plaintiff and the putative class also seek) would also
 12 amount to more than \$8 million.

13 27. Another chain of reasoning considers only claims for theft or
 14 mysterious disappearance under California Personal Articles Policies insuring a
 15 single scheduled item. Coverage limits on State Farm California Personal Articles
 16 Policies with a single scheduled item that had a claim for theft or mysterious
 17 disappearance in the four years preceding the filing of this action, were referred to
 18 SIU, and have not had any indemnity payment issued exceed \$4 million. That
 19 amount, combined with a one to one punitive damages ratio, amounts to more than
 20 \$8 million, far in excess of the jurisdictional minimum under CAFA.

21 28. CAFA also includes a fourth requirement that the primary defendant
 22 not be a state, state official, or other governmental entity against whom the district
 23 court may be foreclosed from ordering relief. 28 U.S.C. § 1332(d)(5)(A). The only
 24 defendant named here is State Farm, which is not a state, state official, or
 25 government entity.

26 29. Finally, the exceptions to CAFA jurisdiction – which Plaintiff bears the
 27 burden of establishing – do not apply. *Mondragon v. Capital One Auto Fin.*, 736
 28 F.3d 880, 883 (9th Cir. 2013). CAFA provides mandatory exceptions to the

1 application of federal jurisdiction under 28 U.S.C. § 1332(d)(4)-(5), and one
 2 discretionary exception to federal jurisdiction under 28 U.S.C. § 1332(d)(5). Each
 3 of the CAFA exceptions require, as a starting point, either an in-state defendant, *see*
 4 28 U.S.C. § 1332(d)(3)-(4) (requiring either “significant relief” to be sought from an
 5 in-state defendant or requiring the “primary defendant” to be an in-state defendant),
 6 or that all claims relate solely to securities or the internal governance of a business
 7 entity, *id.* § 1332(d)(9). Here, the only defendant is State Farm, and none of the
 8 claims alleged relate to securities or internal governance. Therefore, no CAFA
 9 exception applies.

10 **THE NOTICE OF REMOVAL IS PROCEDURALLY PROPER**

11 30. Because the Lawsuit is pending in the Superior Court of California
 12 in and for the County of Alameda, removal to this District Court is proper under
 13 28 U.S.C. section 1441(a).

14 31. State Farm was first served with the Summons, Complaint and First
 15 Amended Complaint in the Lawsuit through service of process on its statutory agent
 16 on August 18, 2023. State Farm timely filed this Notice in accordance with 28
 17 U.S.C. section 1446(b), because it filed this Notice within thirty (30) days of service
 18 of process of the papers setting forth the claim for relief upon which this removal is
 19 based.

20 32. In accordance with the requirements of 28 U.S.C. section 1446(a),
 21 which requires a removing defendant to include, with the Notice of Removal, a copy
 22 of “all process, pleadings and orders served upon such defendant,” attached as
 23 Exhibit “A” are true and correct copies of the Summons, Complaint, First Amended
 24 Complaint, Civil Case Cover Sheet, Notice of Case Management Order, Notice of
 25 Complex Determination Hearing and Minute Order served on State Farm in the
 26 Lawsuit. No other documents have been served in the Lawsuit.

27 33. The defendants designated as Moes 1 through 25 are fictitious
 28 defendants and are not parties to this action. State Farm is informed and believes

that none of the fictitiously named defendants have been served with a copy of the Summons, Complaint, or First Amended Complaint. Therefore, the fictitiously named defendants are not parties to this action and need not consent to removal. *See Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980).

5 34. A copy of this Notice will be promptly served on counsel for Plaintiff
6 and filed with the Alameda County Superior Court.

8 | Dated: September 14, 2023

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By: */s/ Jennifer M. Hoffman*

FRANK FALZETTA

JEFFREY S. CROWE

JENNIFER M. HOFFMAN

KATHERINE SAMPLE

Attorneys for Defendant STATE FARM
GENERAL INSURANCE COMPANY